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RIGHT OF PEOPLES TO SELF-DETERMINATION

The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 46/89 of 16 December 1991 and Commission on Human Rights resolution 1992/6 of 21 February 1992, the preliminary report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

ANNEX

Preliminary report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

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I. INTRODUCTION

1. The General Assembly reaffirms, in resolution 46/89 of 16 December 1991, that the use of mercenaries and their recruitment, financing and training are offences of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations (para. 3). The Assembly denounced any State that persists in the recruitment, or permits or tolerates the recruitment, of mercenaries and provides facilities to them for launching armed aggression against other States (para. 5). It also urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that the territory of those States and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid colonial domination and foreign intervention or occupation (para. 6).

2. The General Assembly called upon all States to extend humanitarian assistance to victims of situations resulting from the use of mercenaries, as well as from colonial or alien domination or foreign occupation (para. 7). It reaffirmed that to use channels of humanitarian and other assistance to finance, train and arm mercenaries is inadmissible (para. 8), and called upon all States which have not yet done so to consider taking early action to accede to or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 9). It condemned the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as all other forms of support to mercenaries, for the purpose of destabilizing and overthrowing the Governments of African States and of other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self-determination (para. 2). It also noted with serious concern the use by the racist South African regime of groups of armed mercenaries against national liberation movements and for the destabilization of the Governments of southern African States (para. 4). The Assembly took note with appreciation of the report of the Special Rapporteur (A/46/459) (para. 1) and requested him to report to the General Assembly at its forty-seventh session on the use of mercenaries, especially in view of the additional elements highlighted in his report (para. 10).

3. At its forty-eighth session, the Commission on Human Rights considered the ninth report of the Special Rapporteur (E/CN.4/1992/12) and adopted without a vote resolution 1992/6 of 21 February 1992, in which, after taking note with appreciation of the report of the Special Rapporteur, it decided to extend the mandate of the Special Rapporteur for three years to enable him to carry out further studies on the use of mercenaries and to make recommendations to the Commission accordingly (para. 3); and requested the Special Rapporteur to report to the Commission at its forty-ninth session on

all further developments concerning the use of mercenaries, wherever this may occur (para. 4). The Commission reaffirmed that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States (para. 1) and called upon all States that have not yet done so to consider taking early action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 2).

4. In its decision 1992/225, of 20 July 1992, the Economic and Social Council approved resolution 1992/6 of the Commission on Human Rights.

5. Pursuant to the aforementioned resolutions, the Special Rapporteur has the honour to submit to the General Assembly for preliminary consideration his tenth report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

6. The Special Rapporteur travelled to Geneva on 26 January 1992 in order to open, in his capacity as outgoing Chairman, the forty-eighth session of the Commission on Human Rights and, at the same time, to submit his ninth report to the Commission (E/CN.4/1992/12). On 29 January 1992, at the third meeting of the session, the Special Rapporteur submitted his report under agenda item 9 concerning the right of peoples to self-determination and its application to peoples under colonial or alien domination or foreign occupation. During his stay in Geneva the Special Rapporteur held consultations with representatives of a number of States and met with members of non-governmental organizations. He also had coordination meetings with the Centre for Human Rights and, in particular, with the Special Procedures Section.

7. The Special Rapporteur returned to Geneva from 12 to 18 July 1992, in order to hold a number of consultations, give interviews and determine the outlines of this preliminary report.

B. Correspondence

8. On 29 November 1991, the Permanent Mission of the Republic of Maldives to the United Nations in New York sent the Special Rapporteur a note verbale which reads as follows:

> "The Republic of Maldives came under a mercenary attack on 3rd November 1988. On the invitation of the Minister of Foreign Affairs, the UN Special Rapporteur on the Question of the Use of Mercenaries visited the Maldives and his report was produced as General Assembly

document A/45/488 under agenda item 103, Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights, entitled, 'The use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination: note by the Secretary-General'.

"The countries of South Asia are beset with many political tensions both internally and externally. The militant separatist groups within some of the countries in the region may give rise to mercenary activities which may impair the sovereignty of small countries like the Maldives. In fact, the armed attack on the country on 3rd November 1988 was directly linked to one of the separatist movements in Sri Lanka.

"The Republic of Maldives has signed the Convention Against the Recruitment, Use, Financing and Training of Mercenaries. At this point the Government is actively considering the ratification of the Convention and introducing specific legislation to cover the crimes covered by this Convention. At this time any illegal military training of persons is prohibited by Article 46(6) of Chapter 2 of the Penal Code (Law No. 21/81 of 15 May 1981 H) of the Maldives."

9. By a communication of 3 December 1991, the Minister for Foreign Affairs of the Republic of Guinea answered the request, made by the Special Rapporteur in a letter of 18 October 1991, for additional information concerning the mercenary attacks which Guinea had earlier denounced, attributable to armed men of the Liberian rebel faction headed by Charles Taylor, in the south-west of Guinea's territory (see below, chap. IV, sect. C).

10. On 16 January 1992, the Permanent Mission of the Arab Republic of Egypt to the United Nations Office at Geneva addressed a note verbale transmitting the following communication from the Ministry of the Interior of that country:

"Regarding the request of the United Nations Special Rapporteur on mercenaries for assistance in obtaining information on the subject, I have the honour to state that mercenaries have no activities in Egypt which could undermine the country's sovereignty.

"It is no secret that, at the international conferences and seminars held for the purpose, Egypt condemns the use, training or organization of mercenaries. In addition, it has played a pioneering role in this matter within the Organization of African Unity.

"As for Egypt's legislation on the subject, the tendency has been towards withdrawing the Egyptian nationality of any Egyptian who joins a foreign organization or performs military service in a foreign State without first obtaining permission from the competent authorities in Egypt.

"The legislation also makes it an offence for anyone, acting without permission from the Government, to assemble soldiers or commit an act of aggression against a foreign State and, by so doing, expose the country to the risk of war or the severance of political relations."

11. In a communication of 23 January 1992, the Permanent Mission of the Bahamas to the United Nations informed the Special Rapporteur as follows:

"The Commonwealth of the Bahamas is not a state party to any international treaty as regards mercenary activities. The only legislation which may be said to cover aspects of such activities is to be found in Chapter XXIV of the Penal Code 1987 Revised Statute Laws of The Bahamas, Chapter 77."

12. The Permanent Mission of the Bahamas attached to its communication an account of the provisions of its penal code categorizing a number of offences in which mercenary activities could be included (offences against the security of the State, treason, sedition, mutiny, unlawful assembly and meeting, unlawful recruitment, unlawful training, offences against the public peace, disturbances and so forth).

13. On 13 April 1992, pursuant to General Assembly resolution 46/89 and Commission on Human Rights resolution 1992/6, the Special Rapporteur sent a communication to all Member States of the United Nations requesting information relating to the following:

(a) Any mercenary activities which, in violation of the sovereignty and laws of their country, might have occurred or be occurring on their territory (recruitment, use, financing, transport or training of mercenaries);

(b) Any mercenary activities on the territory of another country which impaired or might impair the sovereignty of their State and the exercise of the right of their people to self-determination;

(c) Any mercenary activities on the territory of another country which impaired or might impair the sovereignty of other countries in their subregion, region or continent, and the exercise of the right of other peoples to self-determination;

(d) Domestic legislation currently in force and international treaties to which their country was party, relating to the prohibition of mercenary activities and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination;

(e) Position of their government concerning the International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the General Assembly on 4 December 1989;

(f) Suggestions which, in the view of their government, might help to enrich the international discussion of the issue of the use of mercenaries as

a means to violate human rights and to impede the exercise of the right of peoples to self-determination.

14. On 16 April 1992, the Permanent Mission of Saudi Arabia to the United Nations Office at Geneva replied to the aforesaid communication stating as follows:

> "(a) No mercenary activities take place in Saudi Arabia.
>
> "(b) No such activities of mercenaries on neighbouring territories impair the sovereignty of Saudi Arabia and the exercise of the right of self-determination of its people.
>
> "(c) Saudi Arabia's domestic legislation currently in force and its international treaties follow the normal domestic and international laws with regard to mercenary activities.
>
> "(d) We accepted the General Assembly's International Convention of 4 December 1989.
>
> "(e) We have no suggestion to forward on the subject matter which was properly covered by international institutions dealing with it."

15. The Permanent Mission of the Republic of Equatorial Guinea replied to the Special Rapporteur's request for information by a letter dated 27 April 1992. In that communication it states:

> "With regard to the Republic of Equatorial Guinea, we can assure you that this type of mercenary activities has never occurred in our territory and that the Government of Equatorial Guinea does not permit and has never permitted such persons to establish a base in our country.
>
> "Moreover, we cannot know whether such activities are being undertaken outside our frontiers, because we can only state what is happening within them. In conclusion, we can guarantee that our country does not feel threatened in any way, nor is our sovereignty affected."

16. By a communication of 6 May 1992, the Permanent Mission of the Republic of Kenya to the United Nations Office at Geneva informed the Special Rapporteur as follows:

> "My Government shares the concern of many other peace-loving nations on the use of mercenaries and is totally opposed to their recruitment, use, financing and training and was, in fact, a co-sponsor of resolution 1992/6 of 21 February 1992 on the use of mercenaries.
>
> "However, we have not been directly affected by any activities of mercenaries and would therefore not be in a position to provide the information that you require.

"Should I come by any information on the subject that might be of interest to you then I will certainly make the same available."

17. The Permanent Mission of the Sultanate of Oman to the Office of the United Nations at Geneva, through a communication dated 8 May 1992, informed the Special Rapporteur as follows:

"After having considered the points raised in your letter of 13 April 1992, the Government of the Sultanate of Oman would like to affirm that the Sultanate of Oman does not have any activities of mercenaries in its territory, nor does it conduct or support any activities of mercenaries in the territories of other countries."

18. On 2 June 1992, the Permanent Mission of the Grand Duchy of Luxembourg to the United Nations Office at Geneva transmitted the following reply from the Ministry of Justice of that country to the Special Rapporteur's request for information:

"(a) No mercenary activity has occurred or is likely to occur in Luxembourg.

"(b) No activity of the kind that you mention exists at present.

"(c) No activity of this kind has been brought to the knowledge of the Government of the Grand Duchy of Luxembourg in connection with the States members of the European Community, to which Luxembourg belongs.

"(d) Luxembourg has no law that criminalizes the activities of mercenaries as such. Since these activities are unknown in Luxembourg, there has so far been no need to prohibit the various forms of these activities. Luxembourg does, however, have certain criminal law provisions that might, should the need arise, serve as a legal basis in the prosecution of the perpetrators of, or accomplices in, mercenary activities. These criminal law provisions, while not specifically directed against mercenary activities, might nevertheless make it possible to prosecute certain acts related to mercenary activities:

- the Act of 8 August 1985 on the punishment of genocide;
- articles 322-326 of the Penal Code relating to association with criminals;
- article 68 of the Penal Code relating to criminal participation;
- article 331 of the Penal Code relating to proposal to commit a crime;
- articles 137, 138 and 141 of the Penal Code relating to offences relating to the exercise of political rights;

- articles 113-135 of the Penal Code relating to major and minor offences against the external and internal security of the State;

- articles 233-236 of the Penal Code relating to conspiracy by public officials.

Luxembourg is not currently a party to an international convention or treaty prohibiting mercenary activities.

"(e) Luxembourg does not, at this stage, have any view to express on the Convention to which reference is made.

"(f) Luxembourg has no suggestions to make on this matter.

"We remain at your disposal should you wish to obtain any further information."

19. By a communication dated 29 April 1992, the Permanent Mission of the Republic of San Marino to the United Nations Office at Geneva reported that it had transmitted the Special Rapporteur's request for information to its Government.

20. On 18 May 1992, the Permanent Mission of the Principality of Liechtenstein to United Nations Headquarters in New York informed the Special Rapporteur as follows:

"(a) No activities such as are described exist either in the territory of the Principality of Liechtenstein or in that of another country.

"(b) The Act on protection of the State of 14 March 1949, article 15, provides that any person who, being a citizen of Liechtenstein, enters the military service of another country without having obtained the consent of the Government shall be sentenced to three years' imprisonment at the maximum.

"(c) We have no suggestions to submit to you at present."

21. The Permanent Mission of the Republic of Venezuela to the United Nations Office at Geneva, by a communication dated 2 June 1992, stated the following:

"I wish to confirm that, in the case of Venezuela, although the legislation does not make express mention of the term 'mercenary', there exist legal principles and norms which, while they do not define the term 'mercenary' as General Assembly resolution 43/106 does, nevertheless take a stand in favour of the self-determination of peoples and respect for sovereignty, thereby convincingly demonstrating that in Venezuela the use of mercenaries is penalized and prohibited by the legislation in force (Constitution, Penal Code, Code of Military Justice, Weapons and Explosives Act)."

22. The above-mentioned Permanent Mission recalls that, in its communication dated 28 June 1989, it stated, inter alia, the folowing:

"Venezuela's position of according maximum importance to the universal implementation of the right of peoples to fundamental freedoms and the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights is an expression of the policy which the national Government practises in implementation of the principles enshrined in the preamble of the Constitution, such as: social and legal equality, without any kind of discrimination, respect for sovereignty, self-determination of peoples, the universal guaranteeing of individual rights, and repudiation of war, conquest and economic predominance as instruments of international policy.

"It should be stressed that, in the matter of decolonization, Venezuela has, in various international forums, reiterated its adherence to the principle of self-determination of peoples enshrined in General Assembly resolution 1514 (XV) and in the United Nations Charter (...).

"With regard to the information requested about the existence of mercenary activities, both the initial phases and the commission of actual mercenary acts, in response to individual initiatives or on the initiative of a third party, with the aim of organizing acts of military intervention that affect the sovereignty and self-determination of a people, in particular the presence of recruiters and mercenaries who use the territory of the country for the organization of mercenary activities, it may be noted that in Venezuela such activities do not exist.

"With regard to the request for information on situations similar to the above-mentioned but outside the national territory, in territorial areas that affect the region as a whole or the continent or several countries, by subjecting them to the intervention of a foreign Power or a private group that uses mercenaries for the purpose of committing aggression, the Venezuelan Government has no reliable, precise and verifiable information.

"With regard to international treaties that refer to the question of mercenary acts, it should be noted that Venezuela is a party to the four Geneva Conventions of 12 August 1949, namely:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (I);

- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (II);

- Geneva Convention relative to the Treatment of Prisoners of War (III);

- Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV).

"With regard to Protocol I or the Protocol Additional to the Geneva Conventions of 12 August 1949 relative to the protection of victims of international armed conflicts, Venezuela has initiated the relevant procedures, at the domestic level, with a view to accession in due form.

"In the case of the Venezuelan State, some legal principles and norms may be cited which, while they do not define the practice of using mercenaries against sovereign States and national liberation movements as a criminal act or declare the recruitment, financing, training and transport of mercenaries punishable offences, affirm the Venezuelan position in favour of self-determination of peoples and respect for sovereignty and demonstrate convincingly that the use of mercenaries, although the term is not expressly mentioned, is penalized and prohibited by the Venezuelan legislation in force (Constitution, Penal Code, Code of Military Justice, Weapons and Explosives Act)."

23. The Permanent Mission of Venezuela also recalls that, in its communication of 18 July 1989, it also stated, inter alia, the following:

"Venezuela's readiness to accord maximum importance to the universal implementation of the right of peoples to fundamental freedoms and to the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights is an expression of the policies which the national Government practises in implementation of the principles enshrined in the preamble of the Constitution, which are as follows:

'With the aim of maintaining the independence and territorial integrity of the nation, strengthening its unity, ensuring the freedom, peace, and stability of its institutions;

'Protecting and uplifting labour, upholding human dignity, promoting general well-being and social security; achieving equitable participation by all in the enjoyment of wealth, according to the principles of social justice, and promoting the development of the economy in the service of man;

'Maintaining social and legal equality, without discrimination on grounds of race, sex, creed or social status;

'Cooperating with all other nations, and especially with the sister Republics of the hemisphere, for the purposes of the international community, on the basis of mutual respect for sovereignties, self-determination of peoples, the universal guarantee of the individual and social rights of the human person and the repudiation of war, conquest and economic predominance as instruments of international policy;

'Supporting the democratic order as the sole and irrenounceable means of ensuring the rights and dignity of citizens and favouring their peaceful extension to all the peoples of the earth'.

"(...) In the preceding paragraphs are set forth the principles laid down in the preamble of the Constitution (social and legal equality, without any kind of discrimination; respect for sovereignty; self-determination of peoples; repudiation of war, conquest and economic predominance as instruments of international policy), and below are given the articles of the Constitution relating to this subject:

'Article 131. Military and civilian authority may not be exercised simultaneously by one and the same official, except by the President of the Republic, who shall be, by reason of his office, Commander in Chief of the National Armed Forces.

'Article 132. The National Armed Forces form a non-political, obedient, and non-deliberative institution, organized by the State to ensure the national defence, the stability of democratic institutions and respect for the Constitution and the laws, the observance of which shall always be above any other obligation. The National Armed Forces shall be in the service of the Republic and in no case in that of any person or political partisanship.

'Article 133. Only the State may possess arms of war. All those in existence, that are manufactured, or that are imported into the country shall become the property of the Republic, without compensation or proceedings. The manufacture, trading, possession and use of other arms shall be regulated by law.'"

24. In addition to the constitutional norms, the Permanent Mission of Venezuela provided information about various provisions of its national law (Penal Code, Code of Military Justice, Weapons and Explosives Act) that are applicable to acts of individuals or groups having characteristics similar to those of mercenaries. Lastly, the Permanent Mission of Venezuela indicated that the contents of its notes of 28 June and 18 July 1989 "remain valid as a reply to most of the Special Rapporteur's questions".

25. On 4 June 1992, the Embassy of the People's Republic of Angola in Germany transmitted a letter addressed to the Special Rapporteur by the Minister for Foreign Affairs of that country, the substantive part of which stated as follows:

"I have the pleasure and the honour to inform you that, following the recent developments in southern Africa and particularly in Angola, characterized by the cessation of hostilities between Angola and South Africa and by the entry into force of the cease-fire in our country, and due to the political reforms in effect, there is no longer any scope for mercenarism as a phenomenon in the People's Republic of Angola (...)".

26. By a note verbale of 5 June 1992, the Permanent Mission of the Kingdom of Morocco to the United Nations at Geneva transmitted the following reply of the Government of that country to the Special Rapporteur's request for information:

"(a) Morocco, which fully endorses the principles, rights and obligations deriving from the United Nations Charter and the constituent instruments of the international organizations of which it is an active member, has constantly based its foreign policy on the principles of the sovereign equality of States, respect for their political independence and their territorial integrity and respect for the right of peoples to self-determination.

"(b) Moreover, Morocco, which has unceasingly supported the struggle of peoples and their liberation movements for independence, reiterates its dedication to the principle of the non-use of force or threat of force in relations between States and considers that the peaceful settlement of disputes remains the most appropriate way to ensure international peace and security.

"(c) With regard to the question of the use of mercenaries, Morocco wishes to state that its territory has never served as a base for any mercenary activities. On the contrary, it vehemently condemns such criminal practices against the sovereignty and territorial integrity of States and the right of peoples to self-determination.

"(d) In this spirit, Morocco signed, on 5 October 1990, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Its accession to this important instrument demonstrates once again Morocco's firm will to contribute effectively to the efforts of the international community to combat the activities of mercenaries."

27. On 22 June 1992, the Special Rapporteur sent the following communication to the Minister for Foreign Affairs of the Republic of Peru:

"I have been informed that, in a speech given on 7 June 1992, the President of the Republic of Peru stated that there were indications that foreign mercenaries participated, on 4 June 1992, in the attack on a Lima television station which left four dead, 28 wounded, and considerable property damage. The President reportedly confirmed those statements at a later press conference, saying that foreign mercenaries had also participated in other recent attacks in Lima.

"As you know, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the United Nations General Assembly on 4 December 1989, does not limit the definition of mercenary to participants in an armed conflict. Article 1, paragraph 2 of that Convention establishes that 'A mercenary is also any person who, in any other situation, is specially recruited locally or abroad for the

purpose of participating in a concerted act of violence aimed at overthrowing a Government or otherwise undermining the constitutional order of a State or undermining the territorial integrity of a State; is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation; is neither a national nor resident of the State against which such an act is directed; has not been sent by a State on official duty; and is not a member of the armed forces of the State on whose territory the act is undertaken.'

"In fulfilment of the mandate given by General Assembly resolution 46/89 of 16 December 1991, and by Commission on Human Rights resolution 1992/6 of 21 February 1992, requiring me to report to those bodies, at their next sessions, 'on all further developments concerning the use of mercenaries, wherever this may occur', I should like to request from your Government detailed information on the presence and activities of foreign mercenaries in Peru, and, in particular, on their participation in the acts recently reported by the President of the Republic."

28. By a communication of 9 July 1992, the Permanent Mission of the Republic of Guyana to the United Nations informed the Special Rapporteur that "Guyana is not aware of any activities of mercenaries which might have violated the sovereignty and laws of Guyana. In addition, there is no local legislation regarding mercenaries."

29. On 14 July 1992, the Permanent Mission of Austria to the United Nations Office at Geneva transmitted the following information from its Government in response to the Special Rapporteur's request:

"Until now, neither activities concerning the recruitment, use, financing, transport or training of mercenaries in Austria nor any such activities in neighbouring states directed against Austrian interests have come to the knowledge of the Austrian authorities.

"According to Art. 279, para. 1, of the Austrian Penal Code (Federal Law Gazette No. 60/1974), anyone who establishes an armed association without legal authorization, or who heads such an association, or who promotes its membership, recruits or trains for combat or who fosters such an association by means of munition, transport, telecommunication or money commits a crime and is liable to imprisonment of up to three years, irrespective of whether the activities were directed against Austria or a third party.

"It should be mentioned in this context that, according to Art. 320, para. 2 of the Austrian Penal Code, the recruitment of volunteers for war or any armed conflict is also penalized."

30. In a letter dated 23 July 1992, the Permanent Mission of Ecuador to the United Nations Office at Geneva responded to the Special Rapporteur's request for information as follows:

"A. (Information on any mercenary activities which, in violation of the sovereignty and laws of your country, might have occurred or be occurring in your territory (recruitment, use, financing, transport or training of mercenaries)):

"No training school for mercenaries has been discovered in Ecuador. In the past, several so-called 'security' or 'militia' houses had been identified where national and foreign members of subversive groups active in the country, specifically the Colombian subversive group M-19, were trained to carry out illegal activities.

"Furthermore, it is known that members of the Ecuadorian subversive group 'Alfaro Vive Carajo' (AVC) received theoretical and practical training in Libya. It has been confirmed that several members travelled on 25 September 1985 on Iberia flight 922, and received training in the 7 April refugee camp. Their criminal activities became evident that same year.

"There are also reports that Libya provided economic assistance to AVC to enable it to organize itself as a guerrilla movement in Ecuador. Likewise, the Frente Farabundo Marti para la Liberación Nacional of El Salvador cooperated with members of AVC in the training of its members, as in the case of Erazo Kethy Edelmira.

"B. (Any mercenary activities on the territory of another country which impaired or might impair the sovereignty of your State and the exercise of the right of your people to self-determination):

"The presence in Ecuador of hired killers or mercenaries as strictly defined has been confirmed twice:

"In 1989 Peggy Magaly Moreno, Miriam Jeaneth Moreno and Reinaldo Villegas were murdered in the city of Guayaquil by Colombian criminals belonging to an internationally organized band hired for the job. Their names are: Ruben Darío Zavala Suáres, a.k.a. Viejo Iván or Guajiro, and Guillermo Antonio Gonzalez Ospina.

"In March 1991, Dr. Normandia Cabrera and her children were murdered by Colombian hired killers. The perpetrators were Luis Ramiro Quiroz Narvaez, Carlos Alfredo Bastidos, a.k.a. El Negro, Andrés N., a.k.a. El Suco, and Javier N.

"Furthermore, foreigners, in particular, members of guerrilla groups such as M-19, the People's Liberation Army, and the National Liberation Army of the Republic of Colombia, participated in some major guerrilla operations such as:

"The attack on the gates of the National Police station on 12 March 1985, with the participation of the following M-19 members: Seddano Gonzalez, Edgar Humberto, a.k.a. Levi, Ariel Hernando

Corvajalino; Rodriguez Benitez, Hermes, a.k.a. Alfredo; Pedreros Narvaez, Jimmy, a.k.a. Vicente; Santacruz Cobo, Harolf, a.k.a. Harolf; González Ruiz, Morzat, a.k.a. Pedro; Gomez, Rodolfo, a.k.a. Socratés; Salvador N.; Williams, N.; Amada N.; Sandino N;

"The kidnapping and death of Nahim Isaias Barquette by members of AVC from Ecuador and M-19 from Colombia. The Colombian participants were: Carmona Castaneda, Fernando a.k.a. Fabián; Guevara Sánchez, José Henry, a.k.a. Marcos; Parra Afranto, Fayad Alvaro; Ortiz, Hugo; Benavides, Esteban Alfonso, a.k.a. Andrés, Sócrates; Sarmiento Tobón, Germán, a.k.a. Federico, Jorge, Héctor, Miguel Lascano; Mendoza García, Gloria Maria, a.k.a. Marina, Sofia, La Negra; Centeno Venegas, Germán, a.k.a. Viejo, Edilberto; Lopez Camelo, Mario Germán, a.k.a. Chichis, René, Monito; Medina Semiterra, Fabián, a.k.a. Williams, Victor; Herrera Cabagnaro, Angel Manuel;

"The kidnapping of Martín Berrocal in August 1989 and his subsequent release upon payment of an undetermined ransom;

"The kidnapping of Scoth Heindall by the People's Liberation Army.

"As for international crime, a band of Colombians, Chileans and Ecuadorians was in operation in 1989, spreading unrest in our society; their activities culminated in the assassinations of Police Major Eduardo Zea López and Police Chief Luis Antonio Changoluisa. Their leaders included the brothers Estupinan Rosero and Zavala Suárez Ruben Dario.

"C. (Any mercenary activities on the territory of another country which impaired or might impair the sovereignty of other countries in your subregion, region or continent, and the exercise of the right of other peoples to self-determination):

"No attacks against the sovereignty of Ecuador by mercenary groups have been reported. It should be added, however, that the alliance between guerrillas and drug traffickers has greatly damaged countries such as Colombia and Peru and has indirectly affected Ecuador because of its geographical proximity.

"D. (Domestic legislation currently in force and international treaties to which your country is party, relating to the prohibition of mercenary activities and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination):

"Ecuadorian law contains no special provisions relating to hired killers or mercenaries; in the event of a violation of legal norms, the Constitution and laws apply the same treatment to all persons, irrespective of citizenship. Thus, any act considered an offence under the Ecuadorian Penal Code is judged under domestic law. An act classified an an offence is judged as such.

"The Penal Code makes no reference to hired killers or mercenaries, but does characterize kidnapping and murder as an offence that will be judged in the same way irrespective of whether the perpetrator was a national of Ecuador or a foreigner.

"Ecuador is not a party to any international conventions in that field.

"E. (Position of your Government with respect to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the General Assembly on 4 December 1989):

"By note No. 10897/DGT of 19 June 1992, signed by the Secretary General, Ambassador Mario Alemán Salvador, the Ministry of Foreign Affairs asked Dr. Fabian Alarcon Rivera, President of the National Congress, for approval of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

"F. (Suggestions which, in the opinion of your Government, could be useful for the enhancement of the international approach to the use of mercenaries as a means of violating the human rights and impeding the exercise of the right of peoples to self-determination):

"The Office of the General Counsel of the Ministry of Foreign Affairs has stated its position on the matter as follows:

"The use of mercenaries, especially foreign, to overthrow a Government by means of violence and to destabilize the institutions or territorial integrity of a country constitutes a serious violation of the principles and norms of international law protecting the sovereignty, independence and territorial integrity of States.

"In order to safeguard its fundamental national interests, Ecuador should support without reservation any procedure decided by the international community to prevent, impede and sanction such offences.

"In view of the undeniable benefits derived from the existence of an international instrument designed effectively to protect peoples from these threats and dangers, the Office of the General Counsel considers the measures which the Ministry for Foreign Affairs has taken to ensure that our country accedes as soon as possible to this Convention, whose provisions do not contradict existing law, to be appropriate."

31. On 22 July 1992, the Permanent Mission of the Republic of Namibia to the United Nations in New York informed the Special Rapporteur that "Article 4 (b) of the Namibian Constitution provides for the loss of Namibian citizenship by persons who have served or volunteered to serve in the armed or security forces of another country without a written permission of the Namibian Government. As a result, a citizen contravening the Constitution is answerable for his or her action under the Namibian law. Furthermore, with

regard to General Asssemby resolution 46/88, the Namibian Government believes that the realization of self-determination is a fundamental condition for the effective guarantee and observance of human rights."

32. On 30 July 1992, the Permanent Mission of Australia to the United Nations Office at Geneva informed the Special Rapporteur of the following:

"Concerning point (d) of the Special Rapporteur's letter, Australia is in a position to provide the following information:

"The domestic legislation which is primarily relevant in this instance is the Crimes (Foreign Incursions and Recruitment) Act 1978. The Act is designed to prevent persons from Australia preparing for, or engaging in incursions ('hostile activities') in foreign states. It also aims to prevent the recruiting in Australia of individuals to serve in the armed forces of a foreign state.

"Sub-section 6 (3) of the Act defines engaging in a hostile activity in a foreign state as doing an Act for the purpose of achieving any of the following objectives:

"(a) the forceful or violent overthrow of the government;

"(b) engaging in armed hostilities;

"(c) causing the public - by force of violence - to be in fear of death or personal injury;

"(d) killing or injuring any public official; and

"(e) unlawfully destroying or damaging any government property.

"Section 7 of the Act prohibits preparations for incursions into foreign states for the purpose of engaging in hostile activities. The prohibition generally includes Acts done preparatory to the engaging in a hostile activity in a foreign country. It specifically covers the accumulation or stockpiling of arms, explosives, poisons or weapons for the purpose of such activities, as well as the supply of money, goods or services for such activities.

"By virtue of sub-sections 6 (2) and 7 (2), the Act extends to cover actions committed outside Australia's borders. The Act will apply if the alleged offender

"(a) is an Australian citizen;

"(b) is ordinarily resident in Australia; and

"(c) had been in Australia at any time during the year prior to the offending activity for a purpose connected with that activity.

"In many respects, the application of the Act is broader than that of the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. Thus, for example, the Act is not limited to activities associated with persons who are motivated by the desire for financial gain. I understand that the Act was used by the Ad Hoc Committee on the Drafting of the International Convention as a working paper.

"One prosecution has been made in Australia in recent years under the Act.

"In relation to point (e) of the Special Rapporteur's letter, Australia was not a member of the Ad Hoc Committee on the Drafting of the Convention, but Australian delegations to United Nations bodies generally supported its work in drawing up a convention to deal with this subject. The Government is currently examining a proposal to amend the Act in order to enable accession to the Convention."

33. The Permanent Mission of Turkey to the United Nations Office at Geneva, in a communication dated 30 July 1992, informed the Special Rapporteur of the following:

"(a) Mercenaries do not operate and therefore the sovereignty and laws of the land are not violated by them in Turkey.

"(b) There is no information available on the activities of mercenaries operating on the territory of another country which violate the sovereignty of Turkey.

"(c) There is no information relating to the activities of mercenaries which impair the sovereignty of States in our region.

"(d) Article 128 paragraph I of the Turkish Penal Code is as follows:

'Any person, who conscripts soldiers and engages in hostile activities against a foreign state without the acquiescence of the Government, in a manner which will subject the Turkish State to the jeopardy of war, will be punished under an imprisonment sentence from five to twelve years.'

"The elements of the crime of conscription of soldiers under Article 128, differs to a great extent, with the elements of mercenaries of the Convention.

"On the other hand, although it has been envisaged in the Convention that the conscription of mercenaries and the mercenaries themselves will be punished, the Article 128 of the Turkish Penal Code only envisages the punishment of those who conscript mercenaries.

"Consequently, it is not possible to relate the crime of mercenaries envisaged in the Convention with the crime of conscription enunciated under Article 128 of the Turkish Penal Code.

"Article 148 paragraph I of the Turkish Penal Code is as follows:

'He who conscripts soldiers and arms them in the service of a foreigner or in his interest, without the approval of the Government, within the territories of the country, will be punished from three to six years of rigorous imprisonment.'

"(e) Government of Turkey is not party to the International Convention Against Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989.

"(f) Furthermore, Turkey, which has neither active nor passive experience on the use of mercenaries, has no suggestions to make on the subject matter."

34. While concluding the drafting of the present preliminary report, the Special Rapporteur received communications from the Ministry of Foreign Affairs of the Republic of Guinea, dated 9 July 1992; the Permanent Mission of the Republic of Cuba to the United Nations Office at Geneva, dated 4 August 1992; and the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva, dated 10 August 1992. These communications contain factual, doctrinal and juridical elements of special interest which require careful study and analysis by the Special Rapporteur; accordingly, they will be described in his next report to the Commission on Human Rights.

35. Lastly, on the occasion of the visit which he made to Geneva during July 1992 in order to prepare an outline for and begin drafting the present preliminary report, the Special Rapporteur sent communications to the Governments of Angola, Mozambique and South Africa, and to the States which have emerged from the former Socialist Federal Republic of Yugoslavia. These communications are described in the respective sections of the present report.

III. LOCALIZATION OF MERCENARY ACTIVITIES

36. The localization of mercenary activities, as described by the Special Rapporteur in his previous reports, shows that this activity, which has been expressly condemned by the United Nations and characterized as a crime of deep concern to all States, persists in various forms, the most common forms being usually associated with an armed conflict involving the exercise of a people's right to self-determination.

37. When this is the objective sought, the armed conflict can assume an international character. In the 1960s, in the context of African decolonization, the active presence of bands of mercenaries was a means used by colonial interests wishing to remain in the region, to impede the process of self-determination which was leading to the emergence of new African States, or to foster situations of aggressive destabilization, where the mercenary component was essential to the intensification of the armed conflict and its internationalization.

38. An attack on the exercise of the right to self-determination could perhaps be called the typical circumstance in which mercenaries are resorted to. In this case, a State enters into an armed conflict with another State, disregarding the right of its people to self-determination and its territorial sovereignty. The aggressor State becomes involved in mercenary activities, resorting to the recruitment, financing, use and training of mercenaries, in order to attack the other State party to the conflict, thus strengthening its own military capacity or avoiding greater military losses.

39. In the context of an international armed conflict, whatever its cause and nature, mercenary activity is always an illegal act which paves the way for another act contrary to international law or the violation of principles of international law, such as the military aggression of one State against another, the invasion and occupation of its territory, armed intervention with the object of interfering in its internal affairs, or the violation of the principles of respect for the territorial integrity of States, the self-determination of peoples or non-intervention. Mercenary activities are also undertaken by third States that choose to become involved, directly or indirectly, in an international armed conflict, resorting, among other means, to the use of mercenaries.

40. The practice of resorting to mercenary activities, which is now widespread, is not confined to international armed conflicts. The evidence presented in previous reports shows that, in internal armed conflicts and "low-intensity wars", mercenaries are active on one side of a conflict and sometimes on both sides. This is because, in general, such conflicts are linked not only to social relations, economic interests or strictly internal political tensions. Interdependence is a fact of contemporary society, as was the existence of international power blocs until very recently. In this context, it has not been unusual for some of the parties to an internal conflict to resort to "international aid", which used to be forthcoming in the seemingly less compromising form of funds for the recruitment and financing of bands of mercenaries.

41. There are complex cases in which the allegation that mercenaries were used in internal conflicts could not be verified because the proper information channels were lacking and because the official sources maintained a stubborn silence when questioned about the presence of mercenaries. The Special Rapporteur has thus far been unable to verify the presence of mercenaries in internal armed conflicts with international aspects and ramifications, such as those in Afghanistan, Chad, Lebanon and Sudan, among others.

42. The third form of mercenary activity is that resorted to by third States intervening in an internal armed conflict in order to further their own interests. This has been the most common form of mercenary activity in Africa in recent years. Indeed, the conflict in Mozambique, which continues even now, has a mercenary component, in that a third power in the region, South Africa, has taken part in it.

43. A fourth form of mercenary activity can be observed when a third State resorts to the use of mercenaries in order to violate the sovereignty and the self-determination of peoples who are fully exercising both rights. This is what occurred, for example, when previous South African Governments used mercenaries to resist the exercise by the peoples of Botswana, Lesotho, Seychelles, Swaziland, Zambia and Zimbabwe of their right to self-determination.

44. The presence of mercenary activity in internal armed conflicts is indicative of the development, mobility and capacity for adaptation of this type of illegal activity. Diverse political, ideological, economic or strategic security interests and the advantage of not appearing to be directly involved have led third States to encourage mercenary activities through covert operations or via one of the parties to the conflict.

45. The Special Rapporteur has noted that the practice of resorting to the recruitment, use and financing of mercenaries serves the political, ideological, economic or strategic security interests of third States which do not wish to appear to be directly involved in a conflict. There is some evidence that, in order to preserve their image as States which abide by international laws, third States encourage mercenary activities through covert operations or via one of the parties to the conflict, so that the latter may be seen as the one directly recruiting and employing mercenaries. These illegal activities are resorted to in this manner when a third State deems it advantageous to assist a party to the conflict.

46. This does not mean, however, that mercenary activities are resorted to only in armed conflicts. It has recently been shown that such activities may also occur in isolation in association with international crimes or relatively unpredictable changes in the internal circumstances of a State or the international situation. There are mercenary resources and organized groups available to undertake mercenary activities which have diverse immediate objectives, but which in essence violate the sovereignty and self-determination of a people or the stability of a constitutional government. This is true of the links that exist between drug- and arms-trafficking gangs and irregular armed groups which resort to terrorism and also mercenaries, who do one another favours and support one another, adversely affecting, by their violence, both a given country or people and the international community as a whole.

47. The Special Rapporteur wishes to place on record his concern at the intensification of some internal conflicts and the emergence of others during 1992. Among the former, mention should be made of the conflict in the Philippines which has been going on since 1969 between the Government and armed forces of that country and the self-styled New People's Army of the National Democratic Front; the conflict in Myanmar, involving the National League for Democracy, the Karen guerrilla movement and the Rohingyas guerrilla movement of the Muslim community; and the conflict in Sri Lanka, between the Government and armed forces of that country and the self-styled People's Liberation Organization of Tamil Ealam (PLOTE), in which more than 5,000 people have already been killed and injured. The emerging conflicts include the one in Moldova between the Government and the Russian-speaking secessionist forces of the Trans-Dniester Republic which, during 1992, led to the bombing of the cities of Bendery, Grigariopol and Dubossary; the conflicts in Georgia, South Ossetia and, within the Russian Federation, in Checheno-Ingushetia. While these conflicts remain purely internal, unless they are quickly resolved, with prospects for peace, there is a very high risk that mercenary activities may be resorted to. In his previous report to the Commission on Human Rights (E/CN.4/1992/12, para. 48), the Special Rapporteur noted that at least two mercenaries of French nationality had taken part in the conflict in Myanmar, fighting on the side of the Karen rebel movement, that a United States mercenary had participated in mercenary recruitment operations in the Philippines in May 1990, and that mercenaries of Israeli nationality had provided military training in Sri Lanka. The intensification of internal conflicts, as experience shows, heightens the risk that the recruitment, financing and use of mercenaries may be resorted to.

48. Mercenary resources and organized groups are available to undertake mercenary activities having a variety of purposes, for example, to reinforce insecure political interests, to assist or impede the actions of opposition groups, and even to engage in actions which are in themselves unlawful and prohibited, including terrorist acts, drug- and arms-trafficking operations, and paid assassinations.

49. The motives of mercenaries may vary: the mercenaries may be ex-servicemen with a compulsion to make war, fanatical adherents of an ideology incompatible with democratic tolerance, or inherently intolerant people or groups. In every case, however, although this is habitually denied, venality and the professional practice of war are invariably concomitant features of the personality found among those foreigners who plan and execute mercenary activity.

50. The five forms of mercenary activity to which reference has been made in the present section can be undertaken by nationals in their own country; in this case, however, their behaviour does not constitute mercenary activity, but criminal acts liable to prosecution under the penal codes embodied in the internal laws of each country. According to international norms in this area, in order for an offender to be defined as a mercenary he must be an alien. It should be noted, however, that drugs and arms traffickers, terrorists and mercenaries tend to act as international gangs which are interrelated. Thus,

an irregular armed group which practices terrorism can quickly turn into a mercenary group by moving to the territory of an adjoining State in order to provide cover and protection for a gang of drug traffickers, or to occupy a portion of foreign territory, wresting it from the authority of the sovereign State.

IV. MERCENARY ACTIVITIES IN AFRICA

A. General aspects

51. The Special Rapporteur has focused particularly on monitoring the political situation in Africa in so far as it relates to the exercise of the right of its peoples to self-determination and to respect for the sovereignty and territorial integrity of African States. Mercenary activities were one of the means used in the continent to prevent the gradual emergence of new sovereign and independent States. In various parts of the continent internal conflicts were fomented during which mercenaries were recruited, financed and used.

52. Over the past 20 years, young African countries have suffered attacks against the self-determination of their peoples and the territorial integrity of their States. Mercenaries were expressly recruited for those attacks and they often acted with extreme cruelty, violating the fundamental rights of the affected populations. Angola, Benin, Botswana, the Comoros, Lesotho, Mozambique, Namibia and Zimbabwe were among the countries that suffered mercenary attacks whose objective was always to impede self-determination, destabilize established Governments and subject them to the control of a regional power. The racist element and support for the apartheid system were another of the main characteristics of mercenary activities in these countries.

53. While the white minority in South Africa has recently made some meaningful legal and political changes in the apartheid regime, it is a fact that throughout the two previous decades, the Governments of South Africa encouraged situations of violence and military tension in southern Africa with their acts of aggression against the right of the peoples of the region to self-determination, in pursuit of their political interests of social, economic and strategic domination. In keeping with its policy of provocation and hostility, South Africa illegally retained control over Namibia until 1990 and, both directly and through the use of mercenary forces, instigated conflicts or engaged in acts of terrorism and sabotage in the territories of Botswana, Lesotho, Swaziland and Zimbabwe, and ordered commando raids in Zambia. With the aim of maintaining the apartheid regime, which in itself constitutes a violation of the fundamental human rights of the South African people and a crime against humanity, it ordered various attacks against the leaders of African national liberation movements, some of which were carried out by mercenary agents in European countries.

54. Some of the internal conflicts, such as the one in Angola, have ended while others, like the one in Mozambique, continue. In other cases, the intensity of the internal conflicts has lessened and mercenaries are to be found there less frequently or not at all. In fact, mercenaries never act on their own but rather as agents of the power or power groups which recruit them. When military conflicts lessen in intensity or cease altogether, mercenaries redeploy to other locations. Thus, while there are no mercenaries today in Namibia or Zimbabwe, or even in Angola, they are still present in Mozambique where conflict persists.

55. In any case, mercenaries have not withdrawn entirely from Africa. It would be more accurate to say that some of them have redeployed to South Africa where, amidst contradictions, de jure progress and de facto relapses, attempts are being made to consolidate the policy of dismantling apartheid promoted by President Frederick de Klerk. This process, however, is a complex one and is being resisted by racist organizations which, with the avowed intent to paralyse and boycott the process, have recruited mercenaries and set up paramilitary groups which actively provoke acts of racist violence and even of fatal clashes between the different ethnic groups in South Africa.

56. In addition to noting the establishment of armed groups to combat African national liberation movements and to destabilize legitimate governments in the region, the Special Rapporteur cannot but express his concern also over the recrudescence and intensification, in some cases, and the persistence, in others, of various internal conflicts on the continent. The clashes in Burundi left over 3,000 dead in 1991. In Cameroon, in February 1992 alone, clashes between rival muslim tribes in the north of the country led to more than 100 deaths. Clashes with rebel forces loyal to the deposed President Hissène Habré continued during 1992. In Djibouti, there has been fighting between the Afars, grouped together in the so-called Front for the Restoration of Unity and Democracy, and the Issas. The Niger is faced with the rebellion of the Tuaregs, and in Nigeria violent clashes have opposed the Tiv and Jukun ethnic groups. In Rwanda, an insurgent movement is active, while every day the war between clans and sub-clans in Somalia takes the lives of 500 children who have no means of gaining access to humanitarian assistance and consequently die of hunger. Togo is facing a delicate situation as a result of inter-ethnic conflicts, while in the Sudan, a war is being fought between the Sudanese army and the organization that has proclaimed itself to be the Sudanese People's Liberation Army. That conflict has affected the city of Bor. While these conflicts have remained largely internal, failure to resolve them soon and in ways that bring an expectation of peace would create a serious risk of seeing the appearance of mercenary activities, which are offences of deep concern to all States in the international community and in the African continent in particular.

57. The Special Rapporteur also devoted particular attention to the situation in Zaire, a country which during 1991 experienced bloody clashes, looting and severe repression. The Special Rapporteur has received complaints that mercenaries participated in several of those disturbances, in some cases instigating them and in others actively participating in the commission of

criminal acts. Some mercenaries, wearing unofficial commando uniforms, are reported to have sown terror in the streets of Kinshasa during the nights of 23 and 24 September 1991, and in Lubumbashi during the day on 21 and 22 October 1991. These mercenaries were reportedly neither arrested nor brought to trial. Towards the end of 1991, some of the nearly 6,500 members of the Special Presidential Division participated in the commission of grave acts of violence, pillage and looting against the Zairian population. In February 1992, 2,000 Zairians sought refuge in Uganda, fleeing, according to their testimony, from acts of rape, robbery and pillage perpetrated by military and paramilitary groups.

58. On 16 February 1992, the Zairian Minister of Information disclosed that at least 13 persons had been killed in Kinshasa by security forces quelling a demonstration in favour of democratization. The Zairian Human Rights League, for its part, reported that 32 people, including children, had been killed and 100 others had suffered gunshot wounds. The National Sovereign Conference, the only possible conduit towards the democratization of the country and the return to stability, was suspended in January 1992 by the then Prime Minister, who felt that its deliberations were deepening the divisions among the country's ethnic groups. However, it was subsequently reconvened and on 30 July 1992 a global political agreement was reached on the transition to democracy.

B. Angola

59. All the previous reports submitted by the Special Rapporteur made detailed reference to the situation in Angola, in view of the armed conflict which affected that country and the active presence of groups of mercenaries seeking to perpetrate every type of violence against the people and territory of Angola. In 1988, the Special Rapporteur paid a visit to Angola in order to obtain first-hand knowledge of the situation. Since that time, the situation has evolved favourably towards peace. The agreements negotiated and signed by the parties to the conflict have set in motion a process of pacification and national reconciliation, which should culminate in democratic elections to be held in September 1992.

60. The report submitted by the Special Rapporteur to the Commission on Human Rights (E/CN.4/1992/12) provided extensive and chronologically ordered information on the armed conflict which for many years affected Angola (paras. 64 to 81). As is well known, this conflict lasted more than 16 years and caused great destruction in a country which had recently attained its independence and which had excellent prospects for development. The bloodiest acts of the war, which was waged with massive foreign backing, were carried out by mercenary groups recruited to impede the self-determination of the Angolan people. Fortunately, the war ended with the signing of the Estoril peace agreements between the President of Angola, José Eduardo dos Santos, and the leader of the Uniao Nacional para a Independencia Total de Angola (UNITA), Jonas Savimbi, on 31 May 1991, at the headquarters of the Ministry of Foreign Affairs of Portugal.

61. Aside from some difficulties attributable to the long period of distrust and confrontation, the peace agreements are being respected. The cease-fire has been observed and military demobilization has indeed taken place. Tensions are gradually easing although there have been some delays in relation to the timetable established for the confinement of troops. Progress in this area has been possible due to the genuine desire for peace that motivates all Angolans and this effort is receiving the active cooperation of the United Nations operation, UNAVEM II, which is responsible for the verification of the peace process, including the elections which are scheduled for the third week of September 1992. Pope John Paul II visited Angola in June 1992 to show his support for the easing of tensions and for peace.

62. It was in this context that the Special Rapporteur had planned to visit Angola, subject to an evaluation of the progress made towards demobilization, pacification and democratization. One of the assumptions was that, in view of the agreements that put an end to the war, the mercenaries who had been operating in the country would be withdrawn. This eventuality has been confirmed by the communication which the Ministry of Foreign Affairs addressed to the Special Rapporteur on 4 June 1992 stating that "mercenarism as a phenomenon has lost its theatre of action in the People's Republic of Angola". In these circumstances and heeding the suggestion of the Angolan Government itself, the Special Rapporteur thought it best to cancel his visit to Angola or at any rate to reschedule it for after the elections in that country when a visit from the Special Rapporteur might make a significant contribution towards hastening the process of pacification and reconciliation in the country.

63. In any event, the overall positive situation currently prevailing in Angola, with the exception of one area of tension in Cabinda, which is apparently under control, and a few incidents in the Port of Lobito and in Malange, have been the main criteria used by the Special Rapporteur to conclude that mercenary activities have ceased in Angola. Nevertheless, the Special Rapporteur has addressed a letter to the Ministry of Foreign Affairs of that country, in which he again expresses respect for the people of Angola and his readiness to take any action, within the framework of his mandate, which might support, maintain and strengthen the self-determination of the Angolan people and also their right to live in peace and security and to achieve development.

C. Liberia

64. In a note verbale dated 20 September 1991, the Ministry of Foreign Affairs of the Republic of Guinea informed the Special Rapporteur that "the south-west of Guinea has experienced some very flagrant violations in 1991 by armed men of the Liberian rebel faction led by Charles Taylor. These repeated incursions have left victims among the bordering populations. During these offensives the rebels have torn down and burned the Guinean national flag." The communication went on to say that "After the attacks by Charles Taylor's mercenaries on the region of the Republic of Guinea that borders Liberia, it

was the turn of the Republic of Sierra Leone to undergo attacks by these mercenaries. It goes without saying that these acts are flagrant and repeated violations of the sovereignty of the States attacked and of the right of their peoples to self-determination. The peoples of Liberia, Guinea and Sierra Leone have always had close and fraternal relations, as attested by the bilateral and trilateral agreements concluded among their respective Governments. There is no doubt that this conflict is undermining peace and security in the West African subregion."

65. The Special Rapporteur noted with concern the epithet of "mercenaries", which the Guinean Government applied to the Liberian rebel forces led by Charles Taylor, and therefore asked the Government of Guinea for further information on the reported mercenary nature of the forces and for other information relating to the reported attacks.

66. In a communication dated 3 December 1991, the Government of Guinea informed the Special Rapporteur that "the incursion by Mr. Charles Taylor's troops into the Republic of Guinea occurred on 28 and 29 January 1991 at 9 a.m., in the village of Kobolvita, Bokoni District, Macenta Prefecture, located in the south-west of Guinea. Three people were killed and one wounded in the attack, and three houses, 11 huts and the national flag were burned."

67. On 3 November 1991, Charles Taylor, Chairman of the National Patriotic Front of Liberia (NPFL), accused the Government of Sierra Leone of giving refuge to former soldiers of President Samuel Doe and allowing them to launch attacks against his forces from its territory. Starting in March 1991 NPFL troops made successive incursions into the east and south of Sierra Leone. On 27 November 1991 they captured the town of Daru, forcing its inhabitants to flee to Kenema, and seized the bridge over the river Mano, which forms part of the frontier between the two countries.

68. On 20 December 1991, the Acting President of Liberia, Amos Sawyer, speaking in Monrovia, charged that Charles Taylor's forces were composed of "mercenaries, gangsters, crooks and bandits" whose aim was "deliberately to destroy the Liberian nation and people". He went on to say that the town of Man, Côte d'Ivoire, had become a main transit centre for weapons and munitions intended for Taylor's forces, and also accused the Government of Burkina Faso for allowing members of NPFL to use its territory for obtaining weapons. Subsequently, on 12 February 1992, the Presidents of Guinea, Liberia and Sierra Leone, meeting in Freetown, expressed their grave concern regarding the commercial transactions of certain western firms with NPFL, which provided it with the necessary financial resources to continue the war.

69. In May 1992, Liberia was divided in two: the capital, Monrovia, under the control of the interim government headed by Amos Sawyer, cut off from the rest of the country, which was controlled by Taylor's forces. The Economic Community Monitoring Group (ECOMOG), the intervention and peace-keeping force instituted by the Economic Community of West African States (ECOWAS),

controlled only the area around Monrovia, because NPFL was opposed to the group's presence in the rest of the country. On 29 April 1992, Amnesty International reported that in the areas where there had been clashes with Taylor's forces, the army of Sierra Leone had set up irregular courts which were issuing summary death sentences against persons suspected of collaborating with members of NPFL, which forces were also reported to have committed grave violations of human rights.

70. The Special Rapporteur deems it worth pointing out that, although the Liberian war is essentially an internal armed conflict between Taylor's NPFL forces and those of the Acting President Amos Sawyer, and the United Liberation Movement (ULIMO), the events of the last two years demonstrated that there is a real danger it might become international and involve the States of Guinea and Sierra Leone, on the one hand, and Burkina Faso and Côte d'Ivoire on the other, and a related danger of further recourse to mercenary activities. Accordingly, ECOMOG forces must be permitted forthwith to carry out the task for which they were sent to the country, and must also be permitted to move freely throughout the national territory and to supervise the prompt assembly, disarmament and demobilization of the three opposing forces. That is the only way to lay the bases that will enable the Liberian people to fully exercise its right to self-determination through, firstly, democratic multiparty representative elections, and at the same impede the presence, use and financing of mercenaries foreign to the hopes for peace and development of the peoples of Western Africa.

D. Mozambique

71. In his previous reports the Special Rapporteur dealt at length with the situation in Mozambique which, since its proclamation of independence, has been experiencing a grave internal conflict which hitherto has not been resolved. The Frente de Libertaçao de Moçambique (FRELIMO), which has been running the Government since 1975, is facing armed opposition from the Resistencia National Mozambicana (RENAMO). Although peace negotiations began in 1989, so far there are no definitive positive agreements which would mean an effective cease-fire followed by an indispensable process of national reconciliation and complete pacification.

72. In the course of the internal conflict, the FRELIMO Government has contended not only with armed opposition by RENAMO; the latter obtained assistance, firstly, from the racist regime of Rhodesia - before that country became the sovereign State of Zimbabwe - and also from the Government of South Africa. In the context of this assistance, the territory of Mozambique has experienced a number of attacks which have been attributed to groups of mercenaries, who were brought into the internal conflict to strengthen the military capacity of the sectors which opposed the FRELIMO Government.

73. In a communication dated 8 November 1991 from the Permanent Representative of Zimbabwe to the United Nations Office at Geneva addressed to the Special Rapporteur, the Government of Zimbabwe mentioned that the

intelligence service of the former Rhodesia had participated in the creation of RENAMO to retaliate against the Government of Mozambique for permitting the Zimbabwe African Liberation Army (ZANLA) to have bases in Mozambique from which to conduct the liberation struggle. He also mentioned that South African Defence Forces (SADF) had participated in the training, in southern Transvaal, of a number of mercenaries who subsequently joined RENAMO.

74. In 1989, as a result of mediation by the President of Zimbabwe, Robert Mugabe, and the President of Kenya, Daniel Arap Moi, initial, indirect contacts were made between the Government of Mozambique and RENAMO. In December 1989, both Heads of State believed that the time was ripe for the initiation of direct negotiations between the two parties. Thus, the first official meeting since the beginning of the conflict between a representative of the Government and a representative of RENAMO was held in Lisbon on 15 May 1990. Subsequently, both parties requested Italian mediation, which led to the opening of negotiations, as a result of which a partial cease-fire agreement was reached in Rome on 1 December 1990.

75. Under the Rome Accord, RENAMO undertook to respect a cease-fire in the Limpopo and Beira corridors linking the Mozambican ports of Maputo and Beira with Zimbabwe. Another major corridor, the Nacala-Malawi corridor, which links the northern Mozambican port of Nacala with Malawi, was not mentioned in the Accord.

76. During the Rome negotiations, each party recognized the right of the other to exist. On 20 December 1991, both parties stated that they favoured the simultaneous holding of presidential and legislative elections under the supervision of observers from the United Nations and the Organization of African Unity, although no specific agreement was signed on the matter. On 12 February 1992, the Ministry of Foreign Affairs of Italy announced that Italy would no longer act as mediator, as it had done during the first phase of the negotiations, and would instead act as official observer of those negotiations together with Portugal. The Government of Mozambique reportedly requested that the United States of America, France and the United Kingdom should also act as official observers. It should also be pointed out that, on 10 December 1991, the parliament of Mozambique unanimously approved the Universal Declaration of Human Rights.

77. According to the communication from the Government of Zimbabwe (see above, para. 73) RENAMO elements assisted by mercenaries working for SADF, also engaged in economic warfare against Zimbabwe, attacking the Beira-Mutare oil pipeline on at least 127 occasions between 1982 and 1990 and destroying fuel storage tanks in the port of Beira. RENAMO attacked the Beira-Mutare railway line, which provides a direct link between Zimbabwe and the Indian Ocean, on 292 occasions between 1986 and 1991. During that same period, traffic on the adjacent highway linking Beira to Mutare was ambushed on 372 occasions.

78. In addition, the Special Rapporteur has received information indicating that, in the first week of 1991, RENAMO staged five attacks along the Beira corridor and one along the Limpopo corridor, thereby violating the partial cease-fire agreement. On 3 and 4 January 1991, RENAMO troops attacked the Zimbabwe-Beira railroad and, on 4 January, they attacked stores and restaurants in the Beira suburbs. On 7 January they attacked Chimoio, the second largest city along the Beira corridor. On 9 January, there was an armed confrontation in Motasse, in the Limpopo corridor, in which two RENAMO fighters were killed and two Mozambican Army soldiers were injured. RENAMO fighters also launched attacks along the Nacla corridor, which is not covered by the partial cease-fire agreement.

79. The war has continued, in the zones not covered by the Rome Accord, with its customary brutality. On 6 January 1991 RENAMO fighters executed 18 persons in the village of Chirindzene, in the southern province of Gaza. Moreover, RENAMO launched an intensive campaign in an attempt to seize control of the central Gorongosa region. The Tete highway linking Zimbabwe and Malawi has also been attacked on a number of occasions by RENAMO fighters. On several occasions, the attacks led to the deaths of people driving vehicles along the highway and blocked the transport of United Nations food aid to the 820,000 Mozambican refugees in Malawi. On 10 December 1991, 61 civilians were killed in a RENAMO attack on the town of Angoche in the north, as were 10 of the attackers. On 21 December 1991, RENAMO forces occupied the town of Namarroi in the province of Zambezia where a development project funded by a British foundation was being executed.

80. On 1 February 1992, members of RENAMO were reported to have executed 15 people near Xai-Xai in the southern province of Gaza, using axes, knives and garrotes. The Mozambique army, for its part, is reported to have killed 160 members of RENAMO in January 1992 in a number of anti-insurgency operations carried out throughout the country. At the end of February 1992, RENAMO launched a new military offensive. On 6 August 1992, members of RENAMO attacked a town in the interior, killing nine people, and derailed a train.

81. These events seem to demonstrate that, despite the ongoing negotiations, the parties are not yet sincere in their efforts to achieve a just and lasting peace at the earliest possible date. The lengthy civil war has turned Mozambique into one of the poorest countries in the world and resulted in over 500,000 deaths. Refugees and displaced persons account for more than one third of the country's population; 1,280,000 Mozambicans have sought refuge in other countries and 4.6 million have been forced to move to other areas of the country. The war has also caused the deaths of more than 500,000 children under five years of age, who would be alive today if the conflict had not erupted, and has led to widespread hunger and malnutrition.

82. Within the context of this internal armed conflict and with a view to moving towards peace, the Government has taken some steps towards democratization, although it is still made up of only one party. FRELIMO has abandoned its Marxist-Leninist ideology and condemned the one-party system, and has also adopted a number of measures to liberalize the country's

economy. While these decisions have been taken unilaterally, they have been formulated with the aim of easing negotiations with RENAMO and as important elements for a democratic opening.

83. The Special Rapporteur thinks it necessary to point out that, on 5 August 1992, talks began in Rome between the President of Mozambique, Mr. Joaquim Chissano, and the leader of RENAMO, Mr. Alfonso Dhlakama, in the presence of the President of Zimbabwe, Mr. Robert Mugabe, and of the Ministers for Foreign Affairs of Botswana and Italy, with a view to resuming the process of negotiations to reach a just and lasting peace. On 7 August, both parties signed a joint declaration undertaking to sign a definitive peace agreement by 1 October 1992. That was the first time the President of Mozambique and the leader of RENAMO had met since the country declared independence in 1975. The two parties also signed partial agreements guaranteeing security in the Beira and Limpopo corridors and establishing that pluralistic and representative elections would take place within one year of the signing of an overall cease-fire agreement.

84. The Special Rapporteur reiterates his conviction that peace with justice and the consolidation of democracy in Mozambique, with full respect for the right to life, integrity, personal freedom and safety of all citizens, will be achieved once all foreign interference ceases and full exercise of the right of the Mozambican people to self-determination is guaranteed. That is the only way to guarantee the elimination of the presence of mercenaries in the country. In this context, the Special Rapporteur has written to the Government of Mozambique saying that he would like to visit the country within the scope of his mandate, so that on-the-spot observation might help to strengthen the international community's support for the peace, exercise of self-determination and full enjoyment of the human rights of the people of Mozambique.

E. South Africa

85. In all his previous reports the Special Rapporteur has referred to the conflicts in southern Africa and to the relationship that exists between these conflicts and the policy of apartheid pursued by previous Governments of South Africa. In those conflicts the mercenary component has played a key role in impeding the enjoyment of human rights and the exercise of the right to self-determination of the peoples of that region of Africa. At the same time, the earlier reports have made ample reference to the struggle of the South African majority to liquidate the regime of racial segregation. Throughout recent years the African National Congress (ANC) has been the principal orchestrator of the South African people's resistance and its struggle for freedom and equal rights, and it has suffered intense persecution as a result. It was proved that mercenary groups were responsible for acts of repression against ANC leaders and for massacres carried out in suburbs inhabited by the black majority. In his previous report to the Commission on Human Rights (E/CN.4/1992/12), the Special Rapporteur referred to the unlawful

activities carried out by the Civil Cooperation Bureau (CCB), a unit of the SADF Special Forces, the so-called "Unit C-1", a South African police squad based at Vlakplaas, and the Security Department of the Johannesburg City Council.

86. It should be pointed out that, in 1986, a mercenary who was a national of New Zealand attempted to place a bomb in the residence of Thabo M'Beki, the ANC Information Director in Lusaka. On being arrested, he confessed that he had been acting on behalf of the Government of South Africa, and was sentenced to 18 months in prison. Furthermore, Herman, a Swedish mercenary, revealed to ANC representatives in Zimbabwe that those responsible for the murder of Dulcie September, the ANC representative in France, Luxembourg and Switzerland, which occurred in Paris on 29 March 1988, were mercenaries.

87. Since Mr. de Klerk took over as President, the Government of South Africa, has taken a markedly reformist turn, initially aimed at a certain liberalization of policies and subsequently a gradual process of dismantling the apartheid regime and replacing it by an open and democratic political, social and economic organization. The report of the Special Rapporteur (E/CN.4/1992/12, paras. 124 and 125) refers to the repeal of the Land Acts, Group Areas Act and Population Registration Act and the amendment of the Internal Security Act of 1982. In December 1991, the Convention for a Democratic South Africa, brought together 19 political parties, 17 of which adopted a "Declaration of Intent" regarding the establishment of a democratic and non-racial South Africa, defining the general principles of the future constitution. In addition, on 11 December 1991, there was a first mass repatriation of political exiles, involving the return to South Africa of 120 persons who had taken refuge in the United Republic of Tanzania. Another 20,000 refugees were to return to the country. The process of democratization thus achieved significant results until well into 1992.

88. In this context, it is important to emphasize that, as a result of anti-apartheid reforms which have been undertaken, commissions have been established to investigate the crimes committed by members and specialized agencies of the South African Defence Forces and the police. As stated in previous reports and as the investigating commissions have established, mercenaries did participate in the implementation of apartheid policies and they were entrusted with the most violent actions. The Civil Cooperation Bureau has recently been condemned by a judicial commission for having ordered the assassination of anti-apartheid activists and other persons perceived to be enemies of the State. According to recent reports that unit is still carrying out unlawful activities through front entities and firms. Ben Conradie, former director of a military intelligence agency, stated to the South African daily, The Weekly Mail, that SADF had carried out a number of unlawful activities through such entities as the firm Eduguide CC or a network of entities under the umbrella organization Adult Education Consultants of Pretoria. In that context, some members of the Inkatha Freedom Party and leaders tied to that organization are alleged to have been sent to Israel by the South African security forces for the purpose of receiving military

training. The Special Rapporteur has been informed that, in January 1991, nine months after President de Klerk declared that the Government's covert support for Inkatha had ceased, members of the South African police were still funding that party's activities.

89. The earlier reports also stated that groups of whites, extremist supporters of apartheid, have been organizing to resist the measures to eliminate the racist regime, including by calling violent means. Thus while, the Government of President de Klerk has been working to ease political tension, negotiating with the ANC, working for peace agreements (14 September 1991) among the main political and trade union groups, and even encouraging the creation of a national committee for peace and the convening of a Convention for a Democratic South Africa, and has persuaded Parliament to repeal the three Acts which constituted the pillars of the apartheid regime, a part of that same white minority from which the Government is constituted refuses to acknowledge the end of the racist regime which benefited whites by giving them absolute and exclusive privileges.

90. These groups, as is well known, encouraged even by members of the Conservative Party, set up paramilitary machinery with mercenary components for the purpose of "fighting for the survival of the white people". Those groups quickly moved on to violent action, including encouraging confrontations between various ethnic groups in South Africa. For that reason, notwithstanding the determined effort of President de Klerk's Government to move ahead, it was caught in these contradictions which have not only impeded the fluidity of the anti-apartheid process but also threaten to paralyse it.

91. The Conservative Party and the Afrikaner Resistance Movement (AWB) refused to attend the Convention for a Democratic South Africa of December 1991. On 28 January 1992, 10 AWB leaders were arrested by the police in connection with the participation of members of that organization in an armed confrontation which resulted in 58 casualties in 1991. Furthermore, the South African Ministry of Law and Order announced, on 16 December 1991, the opening of an investigation into the attempted kidnapping of President de Klerk's grandson, attributable to members of the Boere-Weerstandsbeweging (BWB) who were seeking to exchange the four-year-old child for two of their arrested militants, one of whom was accused of having killed seven people belonging to the majority.

92. During 1992, these racist groups waged a campaign of terrorist attacks on multi-racial schools, trade unions and courts. The leader of one of those groups, Robert van Tonder, declared on 22 April 1992, in Johannesburg, that the armed struggle is the only means of ensuring freedom for the Boers. On 14 March, 40 racist organizations, among which one should mention the Conservative Party, AWB and the National Reform Party (NRP), signed an agreement to overthrow Mandela and de Klerk. It is worth mentioning that the self-styled World Apartheid Movement engaged and used the services of a Belgian mercenary Jean Bultot as instructor in the use of military weapons.

93. In March 1992, as a way of overcoming the deadlock and opposition of the racist organizations and strengthening his position, President de Klerk called a referendum of the white minority to find out whether it supported continuation of the reform process leading to a new constitution through negotiations. The outcome was favourable for de Klerk and strengthened his political capacity to negotiate agreements between the various organized sectors and particularly with the political organizations. Nevertheless, the referendum did not resolve questions of how the negotiations should proceed, leaving a number of proposals of which consensus is difficult to achieve. ANC has submitted a proposal for a constituent assembly, suggesting that reforms should come from an assembly of 400 members elected by the system of proportional representation and universal suffrage. However, the Government has not accepted this proposal nor any other which does not take the minority's proposals into account.

94. This very real complication, which is directly bound up with the issue of what model of democracy is really wanted in South Africa, is giving rise to further clashes and violence. The one which has had most serious consequences with respect to the negotiation was the massacre in Boipatong, in the suburbs of Johannesburg, which occurred on 17 June 1992. The massacre, in which at least 42 people died, appeared to be an inter-ethnic confrontation, but there have been reports to the effect that it was instigated by white groups that favour violence and mercenaries. As a result of these events, ANC has refused to continue negotiations with the Government, accusing it of being two-faced and of failing to take a clear stand against apartheid and for democracy. President de Klerk, for his part, has stated that ANC is sabotaging the negotiations, alleging that it wants to seize power through confrontation and mobilization, and at the same time has denied that the Government, police or armed forces were in any way responsible for instigating acts of violence. On 5 August 1992, following the two-day general strike called by ANC, the Congress of South African Trade Unions (COSATU) and the Communist Party (SACP), major peace and democracy demonstrations were held in Pretoria and in other cities.

95. In the above-mentioned situation, the Special Rapporteur deems it necessary to monitor closely further developments in South Africa since there is manifestly a risk of increased violence in the context of which the presence and use of mercenaries could be an aggravating factor. There is also manifestly a risk that not only might the process of dismantling apartheid be paralysed but that those who favour reverting to an even harsher apartheid system might gain strength. Under the circumstances, the Special Rapporteur has written to the Minister for Foreign Affairs of South Africa, Mr. Pik Botha, proposing that it would be useful and desirable for the Special Rapporteur to visit South Africa in order to observe the ongoing investigations and help in the definitive elimination of recourse to mercenary activities and the easing of tension and the return to political dialogue for the full pacification, democratization and development of the country.

96. The Special Rapporteur reiterates, as he did in his previous reports, that repeal of the apartheid system in South Africa, consolidation of the peace and democratization process without relapse or concessions, and increased civic awareness among the population would signal the beginning of the easing of tension and the end of the repressive methods used to enforce racist policies. Clearly, if this aim is achieved, recourse to the use of mercenaries will also be over. Finally, the Special Rapporteur believes that the international community and particularly the organs of the United Nations which have been calling for an end to apartheid, which is a violation of the fundamental human rights of the South African people and a crime against humanity, should redouble their efforts to bring the racist violence to an end, to overcome the contradictions and to permit the reopening of negotiations leading to peace and the democratization of South Africa. In this effort, the contribution of the working groups, commissions and experts that, in their respective areas of expertise have been working against apartheid and for freedom and human rights, should be encouraged.

V. PRESENCE OF MERCENARIES IN THE FORMER YUGOSLAVIA

97. The former Socialist Federal Republic of Yugoslavia, formed in 1945 on the basis of the Kingdom of the Serbs, Croats and Slovenes founded in 1918, succeeded in organizing a State in which very different peoples co-existed. Serbs of the Byzantine, Ottoman and Orthodox traditions, Croats linked to the Latin and Catholic world, Albanians, Muslims and others built a State which, in the political sphere, was one of the pillars of the Movement of Non-aligned Countries and, in the economic sphere, implemented, albeit without successful results, the novel concept of a system of self-management and social ownership. However, the abandonment of mutual acceptance between different nations and nationalities and of tolerance and respect between different ethnic groups, religions and customs, and the failure of the federal authorities to act as such, have led to the breakup of the former State and the cruelest war in Europe since 1945.

98. After a brief struggle in July 1991, the Slovenian people were able to form a sovereign and independent State and the Yugoslav People's Army was forced to withdraw from their territory. The Croatian people, however, had to fight bitterly. During the six months between August 1991 and January 1992, the war in Croatia is reported to have taken 10,000 lives and produced over 600,000 internal refugees and displaced persons. Large areas of eastern and south-western Croatia remained under the control of the Yugoslav People's Army and Serbian paramilitary groups. According to the Ministry of Information of the Republic of Croatia, between 17 August 1990 and 19 January 1992, 1,493 identified Croatian civilians died, and also 1,593 members of the Croation National Guard and the police, not to mention the unidentified victims. Other sources informed the Special Rapporteur that on 26 June 1992 the Military Court of Belgrade condemned to death three Croatian soldiers who had participated in the defence of Vukovar. Their names were given as follows: Nikola Cibaric, Martin Sabljic and Zoran Siposa.

99. Almost all the norms of international humanitarian law developed over the centuries with a view to humanizing armed conflicts and reducing the suffering they cause have been violated in this war. The civilian population has been the target of direct attacks by both sides aimed at exterminating them, provoking terror, or forcing them to abandon their homes so that "ethnically clean areas" could be established. Medical assistance has been denied to persons wounded in the war and to the sick, corpses left unburied for days or blown up with explosives, bullets altered so as to increase the suffering of the wounded and reduce their chances of survival, and direct attacks have even been made on the personnel of humanitarian organizations, doctors and health personnel, and members of religious organizations. Prisoners of war have been tortured and maltreated and churches and cultural monuments wantonly destroyed.

100. During the war in Croatia, 14 cease-fire agreements were signed; these were violated within hours and used only to concentrate and redeploy forces. However, a new cease-fire agreement reached on 3 January 1992 under the auspices of the United Nations has significantly reduced the intensity of the armed conflict in Croatia.

101. The former Yugoslavia was soon shaken by another serious armed conflict, however, this time in the Republic of Bosnia and Herzegovina, which broke out despite the various rounds of negotiations which had been conducted between the Muslim, Croatian and Serbian communities of that Republic under the auspices of the European Community. The main characteristic of this conflict has been the indiscriminate bombing of cities and towns, above all the capital, Sarajevo, which has had particularly harsh consequences for the civilian population. The latter has not only endured continuous direct attacks, but has also seen the Republic's infrastructure and resources that are vital for its survival being steadily destroyed. From April to July 1992, Sarajevo was subjected to indiscriminate bombing by the Yugoslav People's Army and a siege by the Serbian paramilitary forces, which totally destroyed the old quarters of the city, inhabited mainly by Muslims. The capital of Herzegovina, Mostar, and the eastern city of Tuzal have also been subjected to continuous bombing and mortar, missile and rocket attacks. During just the first two months of the war in Bosnia and Herzegovina, 5,000 people died or disappeared and over 20,000 were wounded, according to figures provided by the civilian security headquarters at Belgrade. Moreover, the pseudo-doctrine of "ethnic cleansing" is believed to have led to the establishment of various concentration camps in the territory of Bosnia and Herzegovina, where appalling violations of the most elementary human rights are alleged to have taken place.

102. In a dramatic appeal to the international community on 27 May 1992, the Crisis Committee for Health and Social Security of the Republic of Bosnia and Herzegovina reported that the armed conflict had spread to 75 per cent of the territory of the Republic and to nearly 3 million citizens distributed in 72 communities. It reported that 5,170 persons had died or disappeared; 18,400 had been wounded, of whom 7,500 were permanently incapacitated; 580,000 persons had lost their homes and 640,000 had become refugees; and that 52 hospitals and health centres, including the maternity hospital of Sarajevo,

had been destroyed, as had food distribution centres, shops, buses, roads and railways, through systematic attacks designed to damage the essential infrastructure of the Republic. In the view of the Crisis Committee, only the re-opening, under international control, of the Sarajevo and Mostar airports and of the main land access routes to the capital would make it possible for urgently needed international assistance to get through. Security Council resolution 761 (1992) has effectively made it possible for international forces of the United Nations to re-open Butmir airport in Sarajevo, with some interruptions, and to establish some corridors for the delivery of assistance to the affected peoples. Nevertheless, the bombing has continued and the number of victims in this bloody war is increasing every day.

103. In contrast to what has occurred and is occurring in many other armed conflicts in the world, the warring sides in the wars of Croatia and Bosnia and Herzegovina have shown a total lack of respect for the symbols and personnel of international and humanitarian institutions, and have even attacked those who are only trying to mitigate the suffering of the civilian population and the downed combatants. Humanitarian assistance groups from non-governmental organizations, the International Committee of the Red Cross, the European Community and the Office of the United Nations High Commissioner for Refugees have been subjected to serious attacks throughout 1992 in their efforts to alleviate the sufferings of the civilian population and of wounded combatants. On 21 May 1992 the Security Council had to protest to the Belgrade authorities because of the lack of cooperation shown by members of the Yugoslav People's Army and of Serbian irregular armed groups to personnel of the United Nations Protection Force (UNPROFOR).

104. The facts briefly described here are a source of concern to the international community. Within the United Nations, the Security Council has adopted substantive agreements designed to put an end to the war, alleviate the sufferings of the civilian population in general and ensure the safe transportation of humanitarian assistance. In the Commission on Human Rights, denunciations of grave violations of human rights and of the provisions of international humanitarian law were referred to working groups and special rapporteurs for investigation. Subsequently, the Commission on Human Rights met in special session from 13 to 14 August 1992 to consider the situation, and decided on the urgent appointment of a Special Rapporteur. The Special Rapporteur on the question of the use of mercenaries feels compelled to refer to these serious incidents because various sources, official sources and also non-governmental organizations, and the international press, have denounced the involvement of mercenaries in crimes, torture and other types of atrocities that clearly violate the human rights of the peoples affected by the war.

105. It is a concrete fact that various peoples of the former Socialist Federal Republic of Yugoslavia decided on independence through self-determination, and it is another concrete fact that the war against Croatia and against Bosnia and Herzegovina is a consequence of non-acceptance of this independence and of the territorial integrity of those States by Serbia and Montenegro. Both Croatia and Bosnia and Herzegovina, like

Slovenia, have formed sovereign States which the United Nations has recognized and admitted to membership. The war and the occupation of part of their territories amount to a formal attack against the self-determination of their peoples, even though the Federal authorities alleged that this right had already been exercised when the peoples of those States approved the former Yugoslav Constitution. The right to self-defence of the States which were attacked and their right to organize their national armies has to be upheld, although the inclusion of foreign volunteers and combatants in the national armies must be mentioned.

106. This last point, referring to foreign combatants, must be carefully clarified, however, so as to avoid confusion, since mercenaries, war professionals who are paid to become involved and to fan armed conflicts involving States of which they are not nationals, should not incorrectly be called, nor mistaken for, noble international combatants for peace. Whatever the place and continent of their operation, mercenaries are people who profit from war without any concern about the justice of the cause for which they are fighting or about the great violence and destruction they are bringing about. Indeed, it has been established that the most ferocious and criminal actions in internal or international armed conflicts are often carried out by mercenary agents especially hired because of their efficiency in committing war crimes and their inhumanity. In the present case, the denunciations of grave violations of human rights are numerous and are all too frequently attributed to "paramilitary forces", "members of international brigades" and "foreign volunteers".

107. The question of how many foreigners are operating and fighting in the armed conflicts taking place in the territory of the former Yugoslav Republic, what is their capacity and status, how they arrived, who brought them and at what point they entered and became involved in the war machinery must be fully clarified so that the legal framework and individual categorizations are correctly formulated and responsibility can be properly attributed. The appalling violations of human rights and of international humanitarian law in these war situations cannot be justified under any circumstances, but if some of these incidents are the work of mercenaries, responsibility must also be attributed to those who recruited, hired them and involved them. Various resolutions of the United Nations have condemned the use of mercenaries, without any exception, and this is the context in which the presence of foreigners identified as mercenaries needs to be determined in the armed conflicts in the territories of the former Yugoslavia.

108. In view of the delicacy of the situation, the Special Rapporteur opted first, before reaching any definite opinion, officially to approach the parties concerned so as to seek information from them to clarify the situation of foreign personnel involved in military action, and the legal implications. He therefore sent communications to the Ministries of Foreign Affairs of the Republics of Bosnia and Herzegovina, Croatia, Slovenia and the Federal Republic of Yugoslavia, requesting detailed information on the following:

(a) Existence of foreign military forces in their Republic which are not present under international military assistance agreements concluded by their country or part of the military forces the United Nations has assigned to this area as members of UNPROFOR;

(b) Circumstances in which such foreign forces were recruited and trained; military functions they are performing and their participation in the military conflict affecting their country, in order to take account of the status of such forces under the relevant international rules;

(c) Relationship and links of such foreign military forces with the regular armed forces of their country and capacity and status granted to them by their Government;

(d) Specific information their Government might be able to provide on mercenary forces which are involved in the military conflict and which are carrying out activities on behalf of other parties to the conflict.

109. The Special Rapporteur also hopes to obtain useful information from non-governmental organizations and international governmental bodies with a view to providing a full analysis in his final report to the Commission on Human Rights at its forty-ninth session.

VI. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

110. The General Assembly, aware of the recruitment, use, financing and training of mercenaries for activities which violate principles of international law, such as those of sovereign equality, political independence and territorial integrity of States and self-determination of peoples, by means of resolution 44/34 of 4 December 1989, adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and opened it for signature and ratification or accession. In this way, the General Assembly contributed to the progressive development and codification of international law in this area, reaffirming the purposes and principles enshrined in Articles 1 and 2 of the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970).

111. The entry into force of the Convention will entail a broadening, deepening, greater precision and updating of international regulations to prevent, prosecute and punish recourse to the recruitment, use, financing and training of mercenaries. It will also increase and develop cooperation among States to eradicate such activities and will promote observance of the purposes and principles laid down in the Charter of the United Nations. For these reasons, the Special Rapporteur notes with concern that, as of the drafting of this report, only five States have completed the constitutional

procedures leading to the expression of consent to be bound by the Convention: Barbados, which acceded to it on 10 July 1992; Maldives, which signed it on 17 July 1990 and ratified it on 11 September 1991; Seychelles, which acceded to the Convention on 12 March 1990; Suriname, which signed it on 27 February 1990 and ratified it on 10 August of that year; and Togo, which deposited its instrument of accession on 25 February 1991.

112. It should also be noted that 14 other States have signed the Convention: Germany (20 December 1990), Angola (28 December 1990), Belarus (13 December 1990), Cameroon (21 December 1990), Congo (20 June 1990), Italy (5 February 1990), Morocco (5 October 1990), Nigeria (4 April 1990), Poland (28 December 1990), Romania (17 December 1990), Ukraine (21 September 1990), Uruguay (20 November 1990), Yugoslavia (12 December 1990) and Zaire (20 March 1990).

113. The Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with article 19, paragraph 1. The Special Rapporteur is compelled to draw attention to the slow pace of the process of expressing consent to be bound by the International Convention through ratification or accession, since up to now only five States have completed this process.

114. The Special Rapporteur is obliged to draw attention to the following disturbing contradiction: the international community, mainly through the action of the United Nations and the Organization of African Unity, has progressed and made significant achievements in its struggle to eliminate recourse to mercenary activities, yet, three years after its adoption, the Convention adopted by and developed under the auspices of the General Assembly to prevent and punish such activities cannot enter into force because it does not have a sufficient number of States parties. The Convention confirms the legal nature of the many resolutions and declarations of the United Nations condemning activities involving mercenaries, and affirms that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to all States and that any person committing any of these offences should be either prosecuted or extradited. It is therefore essential that the Convention should enter into force so that there can be more effective international cooperation among States in the prevention, prosecution and punishment of these crimes.

115. Despite the delay in the entry into force of the Convention, the Special Rapporteur is bound to note that the principles of international law and the applicable norms of international customary and conventional law are in full force as regards the eradication of these reprehensible activities which have so seriously undermined and continue to undermine the enjoyment of human rights and the exercise of the right of peoples to self-determination.

VII. CONCLUSIONS

116. The repeated condemnation by the General Assembly, the Economic and Social Council and the Commission on Human Rights of the recruitment, use, financing and training of mercenaries is a clear rejection of this criminal activity, which violates not only the right to self-determination but also the human rights of the peoples who have to endure the presence of mercenaries. Therefore, in line with this condemnation, States should not only refrain from recruiting, permitting or tolerating mercenary activities but should also exercise the utmost vigilance against the menace posed by such activities and take the necessary measures, including legislative measures providing for the punishment of the different types of criminal acts involved in mercenary activities. It could be concluded that the United Nations position on the issue is one of outright rejection and condemnation of mercenary activities.

117. The information gathered by the Special Rapporteur shows that mankind continues to be plagued by activities and criminal acts perpetrated by mercenaries that affect both the self-determination of peoples and human rights. The commonest and best known pattern is when mercenaries are paid by one of the parties to fight an armed conflict, and perpetrate very savage crimes and acts of torture, sabotage and destruction of infrastructure. These activities have also been linked to other criminal acts such as terrorism and arms and drug trafficking. What the information confirms is that there are mercenary resources and organized groups available to undertake illegal activities which, in essence, undermine the sovereignty of States and the right of peoples to self-determination or the stability of constitutionally elected Governments. This is the case of the links between bands of drug traffickers and arms dealers with armed groups of irregulars who resort to terrorism, and mercenaries; they exchange favours and help each other and their violence affects not only individual countries or peoples but also the international community as a whole.

118. Crimes involving mercenaries, that have been condemned internationally, include those in which mercenaries operate as bands that have connections with gangs of arms and drug traffickers and terrorists. Thus, a group of armed irregulars that practices terrorism can become a group of mercenaries by moving to the territory of another State in order to cover and provide protection, for payment, to a band of drug traffickers or to occupy part of a foreign territory, usurping the authority of a sovereign State.

119. The number of countries affected by armed conflicts has increased in 1991 and 1992. Africa continues to be the continent most affected in terms of the mercenaries involved in such conflicts. Nevertheless, the trend towards political negotiations and pacification with respect to some of the conflicts in southern Africa in which the presence of mercenaries was reported, has continued. In this regard, as armed conflicts have diminished in intensity or ceased, mercenary activities have also decreased.

120. In the case of Angola, the peace agreements signed in Lisbon between the Government of President dos Santos and UNITA have been observed by both

parties despite isolated difficulties which have been overcome. Democratic elections, one of the major points in the agreements, will be held in September 1992. In this regard, the Special Rapporteur agrees with the Government of Angola in considering that mercenary activities as a phenomenon are on the wane in the People's Republic of Angola.

121. Various bits of information and reports received by the Special Rapporteur on the internal armed conflict in Liberia indicate that there is a real danger of the conflict spreading to the neighbouring States of Guinea, Sierra Leone, Burkina Faso and Côte d'Ivoire and that there is an additional danger of greater use being made of the services of mercenaries. In fact, mercenaries have been mentioned in various reports that also note grave human rights violations.

122. The armed conflict opposing the Government of Mozambique and RENAMO has basically remained at the same level of hostilities despite recent negotiations to end it. This conflict, probably the bloodiest in southern Africa, has been characterized by intervention by foreign Powers and the active presence of groups of mercenaries. So far, negotiations to end the conflict have yielded only partial and short-lived results, such as partial cease-fire agreements in some corridors of the area that have been subjected to military attacks by RENAMO. Nevertheless, the negotiations, which are officially being monitored by the Governments of Botswana, Italy and Zimbabwe, are continuing; the Government of Mozambique has requested that the United States of America and the United Kingdom should also act as official observers. Moreover, the Government has introduced some democratization initiatives aimed at facilitating the negotiations with RENAMO and producing a democratic breakthrough. Attention must, however, be drawn to the recent agreements between the President of Mozambique and the leader of RENAMO who committed themselves, in Rome, to signing a final peace agreement by 1 October 1992 and to holding pluralist and representative elections within one year of the signing of the agreement.

123. For many years, the apartheid policy implemented by South Africa caused disruptions throughout the southern African region. The system of racial discrimination, which in itself is a crime against humanity and a violation of basic human rights, was not restricted to South Africa alone; South African civilians and soldiers participated in illegal activities against the sovereignty and self-determination of other peoples of southern Africa. The use of mercenaries was one of the methods adopted to impose, consolidate and protect the racist policy of apartheid and interfere in the self-determination of other African peoples. The participation of mercenaries, which has been reported in various conflicts of the region, and the use of mercenaries in attacks against ANC leaders is the subject of a number of judicial inquiries that are currently under way in South Africa; these investigations are also confirming the participation of mercenaries in criminal activities.

124. The process initiated by President Frederik W. de Klerk to dismantle apartheid has continued and the repeal of the main laws of the system has paved the way for adoption of an open, non-racial and democratic political,

social and economic organization. President de Klerk's policy has been endorsed in a referendum and commissions of inquiry are currently investigating the crimes committed by members and special agencies of SADF and the South African police; the participation of mercenaries, who were responsible for the most violent actions in the implementation of apartheid policies, has been confirmed before such commissions.

125. Notwithstanding the substantial progress achieved and the existence of a forum for a democratic South Africa, the process is fraught with pitfalls, making it difficult for the entire population to participate, on an equal footing, in the discussion and adoption of a democratic constitution. This has strained relations between the Government and ANC; it is against such a backdrop that violent acts have occurred, such as the massacre on 17 June 1992, of 42 people in Boipatong, a suburb of Johannesburg. Although it appeared to be a clash between two ethnic groups, reports have been received indicating that the incident may have been instigated by white groups that advocate violence, and mercenaries.

126. Information received by the Special Rapporteur confirms that various groups within the white minority population have constituted themselves as racist organizations and have set up paramilitary units, including mercenaries to oppose democratization by violent means and to defend the apartheid system. Therefore, it cannot be said that the situation in South Africa is definitely in favour of democracy and the dismantling of apartheid; in the face of the mounting violence deployed by those who oppose the dismantling of apartheid, the international community must remain vigilant and keep up the pressure against the system of racial discrimination.

127. The present preliminary report also deals with the grave developments in the territory of the former Socialist Federal Republic of Yugoslavia. According to all the information that has been received, various peoples of that former Republic decided to exercise their right to self-determination and opted for independence as sovereign States; in disregard for the sovereignty, independence and territorial integrity of these States, Serbia and Montenegro declared war, first against Croatia and then against Bosnia and Herzegovina. Both Croatia and Bosnia and Herzegovina have declared themselves sovereign and independent States and have been recognized as members of the United Nations. The war and occupation of parts of their territories constitute a flagrant violation of the sovereignty and right to self-determination of the peoples of Croatia and Bosnia and Herzegovina. The right to self-defence of the States which were attacked must be upheld.

128. During these wars, basic human rights and virtually all the norms of international humanitarian law have been violated. Civilians in Croatia and Bosnia and Herzegovina have come under direct attack aimed at annihilating them, provoking tension or forcing them to abandon their homes in order to establish "ethnically pure zones" in pursuit of the so-called "doctrine of ethnic cleansing". In the case of Bosnia and Herzegovina, the existence of concentration camps, mainly for Muslim prisoners, has been confirmed, where atrocious violations of the most elementary human rights are reported to have

been committed. Medical assistance has been denied to those wounded as a result of the war and the sick; corpses have either been left unburied for days or have been blown up; bullets have been altered to heighten the suffering of the wounded and reduce their chances of survival and staff of international and humanitaran organizations, doctors and health personnel and members of religious organizations have even been directly attacked. Prisoners of war have been tortured and maltreated and churches and cultural monuments and infrastructure basic to the survival of the civilian population have been wantonly destroyed.

129. The Special Rapporteur has had to deal with the grave events occurring in the territories of the former Socialist Federal Republic of Yugoslavia since various sources, official sources and also non-governmental organizations, and the international press, have denounced the involvement of mercenaries in crimes, torture and other types of atrocities that clearly violate the human rights of the populations affected by the war. Since foreign combatants are involved in the fighting, the Special Rapporteur has concluded that their situation should be carefully clarified in order to avoid confusion; mercenaries, war professionals who are paid to become involved in and to fan armed conflicts involving States of which they are not nationals, should not incorrectly be called, nor mistaken for, noble international combatants for peace.

130. The confusion with respect to the status and legal position of the foreigners who are fighting in the territories of Croatia and Bosnia and Herzegovina is an objective fact which must be declared in view of the reports on serious human rights violations which are indiscriminately blamed on mercenaries, paramilitary forces, "foreign experts", "international volunteers", "members of brigades", etc. The Special Rapporteur has therefore concluded that letters should be sent to the Ministries of Foreign Affairs of the Republics of Bosnia and Herzegovina, Croatia, Slovenia and the Federal Republic of Yugoslavia requesting specific information on the presence in their respective territories of foreign military forces which are not there under international military assistance agreements to which they are parties or part of the military forces the United Nations has assigned to the area as members of UNPROFOR. The Special Rapporteur is also confident that he can obtain fresh, useful and specific information from non-governmental organizations and international governmental organizations on the presence of mercenaries in this grave conflict.

131. To come into force the Convention must be ratified or acceded to by 22 States. However, at the time when this report was prepared, only five States (Barbados, Maldives, Seychelles, Suriname and Togo) had completed the appropriate constitutional processes signifying their willingness to be bound by the Convention. It would therefore seem that the ratifications and accessions required for its rapid entry into force are slow in coming; this makes it difficult for States to cooperate in order to prevent, prosecute, punish and eradicate mercenary activities.

VIII. RECOMMENDATIONS

132. Taking into account the entire body of United Nations resolutions promoting the independence and right to self-determination of peoples subjected to colonialism and foreign domination or occupation, as well as resolutions directly condemning the use of mercenaries to violate human rights and impede the exercise of the right of peoples to self-determination, it is recommended that the General Assembly reiterate its positions, thereby strengthening the principles of sovereignty, equality under the law, independence of States and self-determination of peoples, and that it expressly condemn the use, financing, recruitment and training of mercenaries as an attack on those fundamental principles.

133. Despite the end of the cold war and the general détente, the number of armed conflicts in the world has increased, and, in some cases, existing conflicts have intensified. Violent confrontation points are to be found on almost every continent. According to the information that has been gathered, this has facilitated the supply of mercenaries willing to involve themselves in these conflicts. At the same time, it has become apparent that mercenary activities are linked to other internationally unlawful activity, such as terrorism and arms and drug trafficking. Therefore, it would be advisable for States to acknowledge this serious situation and to formulate specific provisions and agreements, so that at the level of international law and domestic legislation preventive and punitive measures can be adopted to prevent, prosecute and severely punish mercenary activity.

134. It is recommended that the General Assembly and other organs of the United Nations suggest to Member States that they update their domestic legislation to include provisions defining as an offence the recruitment, use, financing and training of mercenaries, as well as mercenary activities carried out within their territory and the transit of mercenaries through it; that they prohibit their nationals from serving as mercenaries, and regard as aggravating factors the involvement of mercenaries in concurrent activities such as trafficking in arms, drugs or illegal currency; and that they enter into extradition agreements to be implemented when their nationals are sought by victim States on the grounds of the proven involvement of such nationals in acts that go counter to the enjoyment of human rights and the exercise of State sovereignty, the constitutional stability of their governments or the self-determination of their peoples.

135. Although mercenaries continue to be present in southern Africa, it is a demonstrable fact that positive changes are taking place in Angola; that country is gradually moving towards normalization and real peace accompanied by democratization at the political level. According to the Angolan Government itself, mercenaries are no longer involved in the internal conflict. Therefore, it is recommended that the pacification process in this country and the democratization now under way be supported. At the same time the international community must continue to pay close attention to upholding the rights of the Angolan people to full self-determination, enjoyment of human rights and development.

136. Considering the evolution of the internal armed conflict in Liberia, it is recommended that the parties be urged to take steps leading to resolution of the conflict through dialogue and political negotiation, so as to avoid the dangers of its becoming international and to prevent resort to the use of mercenaries.

137. In view of the continuing stalemate in the armed struggle in Mozambique, the Special Rapporteur recommends that the latest negotiations to end the conflict and inaugurate a process of reconciliation, peace, democracy and development be supported. The Governments of Botswana, Italy, and Zimbabwe should be commended for their willingness to act as official observers, and the request of the Government of Mozambique that other Governments join them should be heeded, since that would improve the prospects for the success of the ongoing peace negotiations. In the context of this recommendation, the Special Rapporteur notes that Mozambique is one of the countries where mercenaries have been and continue to be most active.

138. Despite internal problems and resistance, the process of dismantling the apartheid system in South Africa begun by the Government of President de Klerk has continued to advance. However, that does not mean that the crimes committed against the majority population of South Africa in order to force it to accept the apartheid system, crimes in which mercenaries, who enjoyed political and police protection, participated alongside the repressive State structures, should be allowed to go unpunished. Therefore, it is recommended that, while stressing the need to put a definitive end to the system of racial discrimination in South Africa and to replace it by a fully democratic system, it is also necessary to conduct exhaustive judicial inquiries into the criminal acts committed within and outside South Africa in connection with the maintenance and protection of the apartheid regime and in violation of the human rights of the South African people and the right self-determination of other African peoples. This recommendation places particular emphasis on the need to investigate and punish by law the mercenaries who participated in proven criminal activities.

139. Taking into account how the process of dismantling apartheid is proceeding and the endorsement which President de Klerk received from the white minority in the referendum, it is recommended that, to the extent that it is complete, based on the participation on an equal footing of all the people of South Africa and that it signifies the establishment of a democratic constitutional system, without exclusions of any kind, this process be supported. This recommendation stresses the risks and dangers that exist of the current process being reversed, given the existence of white minority groups organized to block the process, practice violence, incite ethnic confrontations and impede equality of civil and political rights. These groups have contracted known mercenaries and are engaged in major violence. In the opinion of the Special Rapporteur, measures taken at the international level against apartheid should be maintained until the process of democratization and <u>détente</u> is fully consolidated, the system of racial discrimination is completely dismantled and a genuinely democratic system guaranteeing the full enjoyment of human rights for all the people is established.

140. With regard to the serious events that have been occurring in the territories that used to be part of the former Socialist Federal Republic of Yugoslavia, where human rights and the right of peoples to self-determination of States which have been recognized as members of the United Nations are being violated, it is recommended that consideration be given to the fact that this war, which started in Croatian territory and later spread to Bosnia and Herzegovina, has witnessed the most savage violations of human rights and breaches of the most basic tenets of international humanitarian law. The international community should take greater notice of the atrocities committed against the civilian population, especially in Bosnia and Herzegovina, and of the fact that mercenaries of various nationalities, who have become involved in this war in return for payment for their illegal services, have participated in these serious acts and crimes.

141. It is further recommended that details should be requested, through the General Assembly and other United Nations organs, from all States involved in this war, for the purpose of clarifying the functions and character of the foreigners currently fighting and providing military services who are not present under international military assistance agreements, or part of the military forces the United Nations has assigned to this area as members of UNPROFOR. Thus it will be possible to distinguish between those who are acting altruistically to promote peace, and mercenaries disguised as "members of an international brigade" or "foreign volunteers" who are being paid.

142. With regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, it is recommended that the General Assembly urge all Member States of the United Nations to consider promptly the advantages of ratifying or acceding to the Convention. It must enter into force because it is an essential instrument for ensuring the security of peoples and their freedom from mercenary activities which threaten the full exercise of their right to self-determination and the full effect and enjoyment of their human rights.